IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 7 OF 2003

Shri Deu Krishna Mandrekar,
Of major age,
Residing at House No. 480,
Naturlem, Mayem, Goa. .... Appellant

Versus

1. Shri Vishnu Krishna Hoble,
   of major age,

2. Shri Arjun Dharma Kalangutkar (deceased)
   Both residing at Naturlem,
   Mayem, Goa. ... Respondents

Shri S.D. Lotlikar, Sr. Advocate with Mr. R. Menezes, Advocate for the Appellant.

Mr. M.B. D'Costa, Sr. Advocate with Mr. J.A. Lobo, Advocate for Respondent No.1.

CORAM : **P.V. KAKADE, J.**

DATE : **28th NOVEMBER, 2006**

ORAL JUDGMENT :

Heard the learned Counsel for both the parties. Perused the record.

2. The appellant-plaintiff has preferred this appeal against the judgment and order passed by the Additional District Judge, Panaji dated

30/08/2002, whereby appeal was partly allowed and part of the judgment and decree passed by the trial Court was decreed, whereby it was declared that defendant no.1 is in exclusive possession of the western part of the suit property and the property under survey no. 2/14, was set aside. Further, it was declared that defendant no.1 and the other heirs of Krishna Vishnu Hoble were the co-owners of the property 'Thorle Bagaita' bearing Land Registration No. 4276.

3. In fact, it was submitted by the learned Counsel for the appellant that he has no grievance so far as the operative part of the judgment and order passed by the lower appellate Court is concerned, but has taken exception to the observations made in para 17 of the body of the judgment which reads thus:

> "17. It may be mentioned that at para 1(e) of the written statement the defendants had categorically averred that the entire property including the suit property is registered under Land Registration No. 4276. These averments were not denied by the plaintiff. Thus the plaintiff had not denied that the suit property is the part of the property bearing Land Registration No. 4276 but had only denied that the predecessor of the defendant had right, title or interest to 1/6th part of the property."

Therefore, it is clear that the appellant has come with the case

that there is no grievance to the findings recorded by the Courts below that defendant no.1 and other heirs of Krishna Vishnu Hoble have 1/6th share in the suit property but have objection to record the Land Registration No. 4276 on the ground that the said Land Registration Number does not correspond with the suit properties which are of survey no. 1/8, 1/9 and 2/14 only.

4. For the said limited purpose, the appeal is preferred. The admission Court while admitting the appeal framed two substantial questions of law namely,

> (a) Whether the First Appellate Court could have concluded that the Respondents were co-owners, entitled to 1/6th share in the property surveyed under Survey No. 1/8 and 2/14, without reaching to the conclusion that the property registered under Land Registration No. 4276 corresponds to the property surveyed under No. 1/8 and 2/14?
>
> (b) Whether the non denial of the statement made by the respondent no.1 in his written statement, could be a ground for learned Appellate Court, to conclude that the property bearing Land Registration No. 4276 was the same as the property surveyed under No. 1/8, 1/9, 1/10 and 2/14 of Haturlim village?

Obviously, the later question is consequential to the first question. Therefore, it would be just and proper on our part to refer to the contents of

para 17 again. What para 17 mentions, is the fact that when the defendant had categorically averred with the entire property including the suit property was registered under Land Registration No. 4276 and it was not denied by the plaintiff and, therefore, such non denial amounts to establishment of the fact that the suit property consists of Land Registration No. 4276.

5. In order to understand the scope of the limited controversy, it must be noted that plaintiff filed the suit for perpetual injunction simpliciter against the defendants and defendant no.1 filed written statement, wherein para 1(e) stated to the effect that the entire property surveyed under survey no. 1/8 and 2/14 were also registered in the Land Registration Office under 4276 of B.11. It is further to be noted that defendants also filed written counterclaim and in the said counterclaim the written statement filed by the defendant was adopted for all the purposes. The appellant-plaintiff filed his written statement to the counterclaim and it is obvious therefrom that the statement to the effect that the suit property consists of Land Registration No. 4276 is not at all denied. In my considered view, this non denial on behalf of the said statement in the written statement of defendant no.1 was the basis for conclusion drawn by the lower appellate Court Judge to record

the observations contained in para 17.

6. The learned Counsel for the appellant vehemently urged that there was absolutely no evidence on record to show that the lands under survey number which are suit properties are corresponding to Land Registration No. 4276 and, therefore, these observations were uncalled for. However, in this regard, I must note that with the help of the learned Counsel for the respondent, entire record was perused and I am satisfied that both the Courts below have arrived at proper conclusions which have ultimately culminated in findings recorded by the lower appellate Court Judge including the contents of para 17 and, therefore, I hold that the questions raised cannot be said to be substantial questions of law and it is not expected in Second Appeal to appreciate the factual aspects of the findings. In other words, I am satisfied that the contents of para 17 recorded by lower appellate Court Judge were called for under the circumstances, on the basis of the entire factual evidence on record and, therefore, in my view, the appeal has no merits and stands dismissed with no order as to costs.

P.V. KAKADE, J.

NH